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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF ARIZONA

12 United States of America

13 vs.

14
15 James B. Panther, Jr.,
16 a/k/a “James Suqui” and “James
Suquilanda,” and

17
18 Defendant.

Case No. CR-19-00448-PHX-DLR-2

**UNITED STATES’ MOTION FOR
SPEEDY TRIAL CALCULATION**

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20 The United States respectfully submits the instant motion for an Order calculating
21 the time that has elapsed under the Speedy Trial Act in this cause. The United States
22 submits that the Speedy Trial Act clock commenced running upon Defendant’s initial
23 appearance before a judicial officer of the court in which such charge is pending, that is,
24 in the District of Arizona on July 11, 2019, pursuant to 18 U.S.C. § 3161(c)(1).

25 I. **Procedural History**

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27 1. On April 23, 2019, a grand jury for the District of Arizona filed an
indictment, under seal, charging Defendant and others with Conspiracy to Commit

1 Securities and Wire Fraud in violation of 18 U.S.C. § 1349, Securities Fraud in violation
2 of 18 U.S.C. § 1348, Conspiracy to Commit Money Laundering in violation of 18 U.S.C.
3 § 1956(h), and Money Laundering in violation of 18 U.S.C. § 1957. An arrest warrant
4 was issued on the same day.

5 2. The Defendant was arrested in the Central District of California on April
6 25, 2019, and made his initial appearance pursuant to Rule 5 of the Federal Rules of
7 Criminal Procedure on April 26, 2019. Defendant was released on conditions.
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9 3. On April 29, 2019, the parties jointly requested a bond hearing which was
10 set for April 30, 2019. On April 30, 2019, the parties executed an agreed modification of
11 the bond conditions and the case was set for a removal and identity hearing on May 9,
12 2019.
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14 4. At the May 9 hearing, Defendant requested a continuance until May 23,
15 2019. The Government did not object and the Court granted the continuance and
16 specifically excluded time from May 9, 2019 to May 23, 2019 under the Speedy Trial
17 Act. *See* Minute Entry, May 9, 2019. (Dkt. No. 12).

18 5. On May 22, 2019, the Defendant again requested a continuance of the
19 removal and identity hearing. The Government did not object and the hearing was reset
20 for June 4, 2019. *See* Notice of Change of Hearing, May 22, 2019 (Dkt. No. 13).

21 6. On June 3, 2019, the Defendant requested another continuance of the
22 removal and identity hearing. The Government did not object and the hearing was reset
23 for June 20, 2019. *See* Notice of Hearing, June 3, 2019 (Dkt. No. 14).

24 7. On June 19, 2019, the Defendant requested a continuance of the removal
25 and identity hearing. The Government did not object and the hearing was reset for July
26 2, 2019. *See* Notice of Change of Hearing, June 19, 2019 (Dkt. No. 17).

27 8. On July 2, 2019, the Defendant appeared and executed a waiver of the
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1 removal and identity hearing pursuant to Rule 5(c) and the Court issued a warrant of
2 removal for the Defendant to appear in the District of Arizona on July 11, 2019. (Dkt.
3 Nos. 20-21).

4 9. On July 11, 2019, the Defendant appeared and made his initial appearance
5 on the indictment before this Court.

6 **II. Argument and Law**

7 The Speedy Trial Act statute requires that a defendant's trial commence within
8 seventy (70) days. 18 U.S.C. § 3161(c)(1). There are two events which may trigger the
9 Speedy Trial Act clock, (1) "the filing date (and making public) of the information or
10 indictment," (2) "of from the date the defendant has appeared before a judicial officer of
11 the court in which such charge is pending" whichever dates occurs last. *Id.* The arrest
12 date or initial appearance before a judicial officer in a district other than where the charge
13 is pending does not trigger the Speedy Trial Act clock.

14 The Speedy Trial Act expressly excludes certain events and periods of time from
15 the calculus, for example, Subsection (h) of the Act provides, in pertinent part, the
16 following:

17 The following periods of delay *shall* be excluded . . . in computing the time
18 within which the trial of any such offense must commence:

- 19 (1) Any period of delay resulting from other proceedings concerning the defendant,
20 including but not limited to --
21 (E) delay resulting from any proceeding relating to the transfer of a case or the
22 removal of any defendant from another district under the Federal Rules of Criminal
23 Procedure.

24 18 U.S.C. § 3161(h) and (h)(1)(E) (emphasis added).

25 In *United States v. Palomba*, 31 F.3d 1456 (9th Cir. 1994), the defendant was
26 indicted in the Northern District of California, and arrested and brought for an initial
27 appearance in the Central District of California on April 12, 1990. He was not brought

1 before a judicial officer of the Northern District of California until May 15, 1990. The
2 Ninth Circuit held the Speedy Trial Act clock does not begin until “the defendant is
3 brought before a “judicial officer of the court in which the matter is pending,” 18 U.S.C. §
4 3161(c) … [The defendant] was not brought before a judicial officer of the Northern
5 District of California until May 15, 1990.” The 70-day period did not commence until
6 defendant’s first appearance before the district court in which he would be tried, rather
7 than on defendant’s earlier appearance in another district on day of arrest. *Palomba*, 31
8 F.3d at 1462.

9 In this matter, Defendant was arrested on April 25, 2019 and made his initial
10 appearance in the Central District of California on April 26, 2019. The Defendant did not
11 appear in the charging district, the District of Arizona until July 11, 2019. The
12 Defendant’s statutory right to a speedy trial, therefore, does not accrue until he appears
13 before a judicial officer of the District of Arizona. The Speedy Trial Act clock does not
14 start until July 12, 2019, the day after the Defendant’s appearance before a judicial officer
15 in the District Arizona, as time calculations “exclude the day of the event that triggers the
16 period.” Fed. R. Crim. P. 45(a). Additionally, the removal and identity hearing in the
17 Central District of California was delayed, multiple times, at Defendant’s request. Delays
18 resulting from any proceeding relating to the removal of a defendant to another district are
19 automatically excluded from the Speedy Trial Act calculus. *See* 18 U.S.C. §
20 3161(h)(1)(E).

21 As such, the period of time prior to Defendant’s appearance in the District of
22 Arizona must be excluded from the Speedy Trial Act calculus. Accordingly, the United
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1 States requests that this Court enter an Order reflecting the commencement of the Speedy
2 Trial Act clock on July 12, 2019.

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4 Respectfully submitted,

5 ROBERT ZINK
6 Acting Chief, Fraud Section
7 Criminal Division
8 U.S. Department of Justice

9 By: s/ Tracee J. Plowell
10 Tracee J. Plowell
11 Assistant Chief

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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this 16th day of July, 2019, I electronically transmitted the
16 attached document to the Clerk's Office using the CM/ECF System for filing and
17 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:
18

Dennis Kieran Burke, and Mark Samuel Kokanovich
17 Attorneys for Defendants
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19
20 s/ Tracee J. Plowell
21 Attorney for the United States
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